

Honorable _____

**UNITED STATE DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

ACME FOOD SALES, INC.,

Plaintiff,

v.

STARR SURPLUS LINES INSURANCE
COMPANY,

Defendant.

Cause No.: _____

(KING COUNTY SUPERIOR COURT
CAUSE NO. 13-2-24404-7 SEA)

**DEFENDANT'S NOTICE OF REMOVAL
TO FEDERAL COURT**

TO: THE CLERK OF THE UNITED STATES DISTRICT COURT IN AND FOR THE
WESTERN DISTRICT OF WASHINGTON. PLEASE TAKE NOTICE THAT Defendant in
the above-entitled matter hereby removes to this Court the state court action described below.

Introduction

Defendant Starr Surplus Lines Insurance Company ("Defendant"), by and through its
counsel, and pursuant to 28 U.S.C. 1332, 1441, and 1446, hereby gives notice of the removal of

1 this action to the United States District Court for the Western District of Washington. Pursuant
2 to 28 USC §1441, as grounds for this removal, Defendant provides as follows:

3 **Commencement of State Court Action by Plaintiff**

4 1. On or about July 1, 2013, Plaintiff Acme Food Sales, Inc. ("Plaintiff") filed an action in
5 state court, which is captioned *Acme Food Sales, Inc. v. Starr Surplus Lines Insurance Company*,
6 Superior Court of the State of Washington for King County, Case No. 13-2-24404-7 SEA (the
7 "State Court Action"). The State Court Action was commenced when Plaintiff's Summons and
8 Complaint were filed with the Clerk of the King County Superior Court on July 9, 2013.

10 2. Plaintiff then served Defendant with a Summons; Civil Information Sheet; and a copy of
11 its Amended Complaint for Breach of Contract and Bad Faith ("Amended Complaint") on July
12 12, 2013.

13 **Nature of the Case/Jurisdiction**

14 3. The State Court Action is a civil action regarding a claim made by Plaintiff under a
15 Product Contamination insurance contract issued by Defendant over which this Court has
16 original jurisdiction pursuant to 28 U.S.C. 1332. The amount in controversy exceeds \$75,000
17 and there is complete diversity of citizenship between Plaintiff and Defendant.

19 4. Diversity exists because Plaintiff is a business entity organized and existing in the State
20 of Washington and Defendant is a business entity organized and existing in the State of Illinois
21 with its principal place of business in the State of New York. *See* 28 U.S.C. 1332(c)(1).

22 5. Plaintiff seeks relief from Defendant in the State Court Action based upon the following
23 causes of action: 1) a declaration regarding whether there is coverage under the Starr insurance
24 policy; 2) breach of contract; 3) violation of Washington Unfair Business Practices and
25

Consumer Protection Act; 4) breach of duty of good faith; and 5) violation of the Washington Insurance Fair Conduct Act.

6. The amount in controversy exceeds the requisite \$75,000 minimum. *See* Amended Complaint, attached as **Exhibit A**.

7. 28 U.S.C. 1446(c)(2)(A) provides, in pertinent part, as follows:

the notice of removal may assert the amount in controversy if the initial pleading seeks... (ii) a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded...

Here, Plaintiff does not identify the monetary figure that it is seeking in the Amended Complaint, but instead provides, “the amount in controversy exceeds \$300.” *See* Exhibit A, ¶ 4. Therefore, Defendant is asserting that the amount in controversy exceeds \$75,000 in this Notice of Removal because the initial pleading seeks a money judgment and State practice permits recovery of damages in excess of the \$300 amount that was demanded.

8. Plaintiff submitted a Notice of Loss on or around December 21, 2012, which provides that total costs for the recall at issue in this action were \$329,482.83 at that time. *See* Cost Summary, attached as **Exhibit B**. Plaintiff notes that “this is not final and more items and costs will be added.” *See* E-mail regarding Cost Summary, attached as **Exhibit C**.

9. Further, the following portions of the Amended Complaint make clear Plaintiff is seeking more than \$75,000:

- “The ‘accidental contamination’ and ‘governmental recall’ coverages are each subject to limits of \$1,000,000 for each “insured event” and in the aggregate for the period of the Policy.” Exhibit A, ¶ 9.
- “Acme seeks a declaration that coverage exists under the Policy for the loss it incurred in connection with Acme’s recall of the Product.” Exhibit A, ¶ 43.

- 1 • “As a direct and proximate result of Starr’s violation of the CPA, Acme has been
2 damaged in its business in an amount to be established at trial, and is entitled to recover
3 its actual damages, treble damages as permitted by the CPA, reasonable attorneys’ fees,
4 and actual and statutory litigation costs, including but not limited to expert witness fees.”
5 Exhibit A, ¶ 51.
- 6 • “As a direct and proximate result of Starr’s bad faith, Acme has been damaged in an
7 amount to be established at trial and is entitled to recover its actual damages, reasonable
8 attorneys’ fees, and actual and statutory litigation costs, including but not limited to
9 expert witness fees.” Exhibit A, ¶ 54.
- 10 • “As a direct and proximate result of Starr’s violations of [Washington Insurance Fair
11 Conduct Act, Chapter 48.30, RCW], Acme has been damaged in its business in an
12 amount to be established at trial, and is entitled to recover its actual damages, treble
13 damages, reasonable attorneys’ fees, and actual and statutory litigation costs, including
14 but not limited to expert witness fees.” Exhibit A, ¶ 57.
- 15 • “The insured continues to document the recall costs, product replacement costs and
16 additional costs it incurs reimbursable under the policy. The insured will submit those
17 costs once determined.” Exhibit 6 to Amended Complaint, P. 2, attached as **Exhibit D**.

18 10. Local Rule W.D. Wash. 101(a) provides:

19 If the complaint filed in state court does not set forth the dollar
20 amount prayed for, a removal petition shall nevertheless be
21 governed by the time limitation of 28 U.S.C. 1446(b) if a
22 reasonable person, reading the complaint of the plaintiff, would
23 conclude that the plaintiff was seeking damages in an amount
24 greater than the minimum jurisdictional amount of this court. The
25 notice of removal shall in that event set forth the reasons which
cause petitioner to have a good faith belief that the plaintiff is
seeking damages in excess of the jurisdictional amount of this
court notwithstanding the fact that the prayer of the complaint does
not specify the dollar damages being sought.

20 Defendant reasonably believes Plaintiff is seeking an amount greater than \$75,000 in this action
21 because Plaintiff is seeking damages for a recall of its product and is requesting treble damages
22 in addition to attorney fees and costs. Defendant has a good faith belief that Plaintiff is seeking
23 damages in excess of the jurisdictional amount based upon the allegations set forth in Plaintiff’s
24 Amended Complaint.

Intradistrict Assignment

11. Venue is proper in the United States District Court for the Western District of Washington because it embraces the location where the State Court Action is pending. *See* 28 U.S.C. 1446(c).

12. Accordingly, this Court has jurisdiction over this action pursuant to 28 U.S.C. 1332. The parties are completely diverse, the amount in controversy exceeds \$75,000, and venue is proper in this Court.

13. Defendant is removing this case to the Seattle Division of this Court pursuant to LCR 3(d)(1) because Plaintiff filed suit in the Superior Court of the State of Washington for King County.

Record in State Court

14. The following pleadings, as are available in the file of the State Court Action, encompass all of the pleadings received or filed by Defendant up to the present time:

Summons

Complaint

Amended Complaint

Case Information Cover Sheet

Affidavit of Service re: Complaint (July 9, 2013)

Affidavit of Service re: Amended Complaint (July 12, 2013)

Order Setting Civil Case Schedule

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Compliance with Rules

15. Defendant is filing this Notice of Removal within thirty (30) days after Defendant's receipt, through service or otherwise, of copies of the initial pleading from which it may be ascertained that this action is removable. 28 U.S.C. 1446(b).

16. Pursuant to LCR 101, Defendant is filing a copy of the Amended Complaint contemporaneously with this Notice of Removal. *See* Exhibit A.

17. Further, Defendant will file with this Court all additional records and proceedings from the State Court Action along with Defendant's verification that they are true and complete copies within 14 days of filing this Notice of Removal pursuant to LCR 101.

Concurrent Notice to State Court

18. Defendant is concurrently filing and serving a copy of this Notice of Removal with the Court Clerk of the King County Superior Court.

Reservation of Rights

19. Defendant specifically reserves all of its rights under the insurance policy and under applicable law, including the right to assert any and all defenses and affirmative matters in this case, including, but not limited to, any defenses available under Rule 12(b) of the Federal Rules of Civil Procedure. Nothing in this Notice of Removal is intended as a waiver or relinquishment of such rights.

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Conclusion

WHEREFORE, Defendant respectfully requests that the State Court Action pending in King County Superior Court now be removed to this Court and that all further proceedings be had in this Court.

DATED this 7th day of August 2013.

CHAMBERLIN KEASTER & BROCKMAN LLP

/s/

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Counsel for Defendant Starr Surplus Lines
Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2013, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system. I further certify that on August 7, 2013 I served a copy of the foregoing document upon the following interested parties in the manner indicated below:

<i>Attorneys for Plaintiff</i> Donald B. Scaramastra Garvey Schubert Barer 1191 Second Avenue, 18th Floor Seattle, WA 98101-2939	<input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Overnight Courier <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via U.S. Mail <input checked="" type="checkbox"/> Via Email to dscar@gsblaw.com
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DATED this 7th day of August, 2013.

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